IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1756 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHETH MANILAL RANCHHODLAL VISHRAM BHAVAN, TRUST,
Versus
OCHHAVLAL K TRIVEDI (DIED)

Appearance:
1. Civil Revision Application No. 1756 of 1981
[MR RN SHAH for Petitioner No. 1
..... for Petitioner No. 2
NOTICE UNSERVED for Respondent No. 1
MR PV NANAVATI for Respondents No. 2,2-5-5

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 06/12/2001

ORAL JUDGEMENT

#. Sheth Manilal Ranchhodlal Vishram Bhavan Trust as

petitioner through its trustees has filed this Revision Application under section 29(2) of the Bombay Rent Act challenging the judgment and decree dated 13.7.1981 passed by the Appellate Bench of the Court of Small Causes, Ahmedabad in Civil Appeal No. 34 of 1978. The Appellate Bench of the Court of Small Causes, Ahmedabad was pleased to confirm the judgment and decree passed by the Judge of the Court of Small Causes at Ahmedabad in HRP Suit No. 5568 of 1973 by the impugned judgment and decree.

2. The facts giving rise to this CRA are as under:

2.1 There is property known as Manilal Mansion bearing Survey Nos. 1391,1397/17 and municipal census No.. 671/17 and old municipal census No. 671/37 (hereinafter referred to as the suit property). The plaintiffs have filed a suit against the original defendant (since deceased) for the recovery of possession of the suit premises. According to the plaintiffs the defendant no.1 was a statutory tenant. The tenancy commences from 1st of each English Calendar month and ends on the last day of the month.The rent was fixed at Rs.33/- per month exclusive of municipal tax and education cess and electric burning charges. According to the plaintiffs the defendant no.1 had transferred, assigned or sub let illegally the suit premises to the defendant nos 2 to 4 and thus the defendant no.1 has committed breach of the terms of tenancy. The defendant no.1 was not using the suit premises since last six months from the date of filing of the suit. It is alleged by the plaintiffs that they require the suit premises reasonably and bonafide for their own use and occupation and that greater hardships would be caused to them, if the defendants are not asked to vacate the suit premises. It is also alleged that the defendant no.1 is a tenant in arrears from 1st January 1873. In the circumstances a notice dated 8th June, 1973 was served upon the defendant no.1 terminating the tenancy on 30th June 1973 but the defendant did not vacate. Hence the plaintiffs filed the present suit against the defendants.

#. The defendant no.l filed written statement at exh.29 and defendants nos 2 to 5 filed written statement at exh.30. According to the defendant no.1 plaintiffs have no right to file the suit. The defendant no.1 has also contended that he is not a tenant in arrears. The defendant no.1 also raised a dispute regarding the standard rent of the suit premises. The defendant no.1 also contended that the suit premisses were never

transferred, assigned or sub let to the defendants nos 2 to 5 and that defendant no.1 has not committed any breach of the terms of tenancy. According to defendant no.1 he is dealing in mill gin stores and he is keeping his office and shop in the suit premises. It is also alleged that defendant no.1 has started partnership with the defendants nos 2 to 4. The defendant no.1 also contended that the use of the suit premises is continuous. In the alternative it is also contended that if the Court of Small Causes at Ahmedabad comes to the conclusion that the the suit premises are transferred then the same is transferred with the consent of the plaintiffs prior to 1959 and hence the defendants are protected tenants. The defendant no.1 has also denied to be in arrears of rent.

#. Defendants nos. 2 to 5 have also raised contentions over and above the contentions raised by the defendant no.1 have contended that the suit against them is filed in collusion with the defendant no.1. The suit is also barred by delay,laches and estoppel and non joinder and misjoinder of parties. According to them, the suit premises were let out to the defendant no.4 since 1964 and at that time the plaintiff took a deposit of Rs. 1000/- and the rent was fixed at R.15/- per month and the rent receipts were given by the Thereafter the defendant no.1 started partnership with the defendant no.3 in the name of defendant no.2 wherein over and above all the defendants one Amirasbhai Chandulal Parikh was also a partner. The defendant no.1 also was joined as partner and it was agreed to give lump sum amount to him. It is therefore, contended that therefore, they are protected tenants.

#. The learned Trial Judge framed issues exh.50 and one of the important issues is, issue no.9 which is reproduced below:

"9. Whether the defendants nos 2 to 5 prove that they are in occupation of the suit premises since 1954 and that they are doing business in the suit premises and therefore, they have become direct tenant of the suit premisses ?

4.1. As regards this issue is concerned the learned Trial Judge, after considering the oral and documentary evidence on record held that on the basis of the documentary evidence produced by defendants nos 2 to 5 on record clearly go to show that the defendant no.4 was occupying the suit premises since 1954 and therefore, the learned Trial Judge held that the defendant no 1 occupying the suit premises since 1954. As regards the

other issues the learned Trial Judge also held that the He was not in arrears of rent. The learned Trial Judge also fixed the standard rent of the suit premises at Rs. 33/- p.m.

#. Being aggrieved and dissatisfied by the aforesaid judgment of the Judge, Court of Small Causes, Ahmedabad, the petitioners-original plaintiffs filed Civil Appeal No. 34 of 19789 before the Appellate Bench of the Court of Small Causes at Ahmedabad.

5.1 The Appellate Bench of the Court of Small Causes, Ahmedabad also considered the finding of the Trial Court and the Appellate Bench of the Court of Small Causes held that the contentions raised by Mr. Dholakia learned advocate for the petitioners regarding waiver of claim of sub-tenancy and estoppel created by the deeds exh. 113 etc. do not come in the way of defendant no.4 to claim protected sub-tenancy. As regards other issues also the Appellate Bench of the Court of Small Causes confirmed the findings of the learned Trial Judge and held that the petitioners - plaintiffs are not entitled to recover possession of the suit premisses under section 12 of the Bombay Rent Act.

#. Being aggrieved by the aforesaid judgment and decree of the Appellate Bench of the Court of Small Causes, the petitioners - plaintiffs have filed this Civil Revision Application before this Court.

#. Mr. R.N.Shah learned advocate for the petitioners submitted that during the pendency of the Revision Application respondent no.4 died and he had also filed Civil Application for bringing the heirs and legal representatives of the respondent no.4 on record and the same was granted.

#. Mr. R.N.Shah learned advocate appearing for the petitioners raised the following points before me for assailing the order of the Appellate Bench of the Court of Small Causes in this behalf.

1. The Appellate Bench of the Court of Small Causes ought to have allowed the appeal filed by the petitioners-plaintiffs by holding that the plaintiffs are entitled to a decree for possession on the ground of sub-letting.

2. It should have been held that the defendant no.4 has failed to prove that he was entitled to

be declared as a protected tenant by establishing that he was in possession of the suit premises as sub-tenant prior to 21.5.1956.

3. It was an error of law to hold that the defendant no.1 has sub let the suit premises to the defendant no.4 prior to 1959 and hence the defendant no.4 is a protected sub-tenant under section 15(2) of the Bombay Rent Act.

4. Both the courts below have erred in law in holding that the plaintiffs are not entitled to a decree for possession under section 13(1)(e) of the Bombay Rent Act.

5. The Lower Appellate Court ought to have passed a decree for possession in favour of the plaintiffs by holding that the defendant no.1 has unlawfully sub-let assigned and transferred the suit premisses to the defendant no.2 to 5 after 21st May 1959.

6. From the proved fact that the defendant no.1 inducted the defendant no. 2 to 5 as unlawful sub-tenant since 1965,iti should have been held that the defendants nos 2 to 5 are not entitled to be declared as protected sub-tenants under section 15(2) of the Bombay Rent Act and they are liable to be evicted under section 13(1)(e) of the Bombay Rent Act.

#. I have gone through the record of the case and and on perusal of the record I am of the view that the defendant no.4 himself was carrying on business in the suit premises since 1954 by paying rent rent to the defendants and enough documentary evidence has been produced by defendants nos 2 to 5 on record would go to show clearly that defendant no.4 was occupying the suit premises since 1954 and therefore, the defendant no.4 was occupying the suit premises since 1954. On this point both the Trial Court as well as the Appellate Bench of the Court of Small Causes have given their finding and cogent and convincing reasons have been given by the the Courts below in arriving such conclusion. Mr. R.N.Shah learned advocate for the petitioners has not been able to assail the said finding by showing any oral or documentary evidence in this behalf.

##. In the circumstances the judgment and decree passed

by the Appellate Bench of the Court of Small Causes at Ahmedabad is confirmed. The Revision Application is dismissed with no order as to costs. Rule discharged.

(K.M.Mehta.J)

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